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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/800,902	03/15/2004	Robert L. Turk	13615.60	1473

7590 01/06/2006

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EXAMINER

DURAND, PAUL R

ART UNIT	PAPER NUMBER
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3721

DATE MAILED: 01/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/800,902

Applicant(s)

TURK, ROBERT L.

Examiner

Paul Durand

Art Unit

3721

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 October 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-10,12-17 and 19-24 is/are pending in the application.
- 4a) Of the above claim(s) 16 and 22-24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-10,12-15,17,19-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 4/13/2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Claims 16 and 22-24 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 4/13/2005.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
3. Claims 1,3-10,12-15,17 and 19-21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims claim the limitation "elastic member", but it is unclear to the examiner what the elastic member encompasses. Is it the mount generally indicated by 60 and 100 (i.e. the whole part), or does it encompass only the web generally indicated by 64,116 and 126? The specification does not explicitly disclose the term elastic member, though the examiner would find some support by the choice of materials listed in the specification.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

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form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1,4-6 are rejected under 35 U.S.C. 102(e) as being anticipated by Moeller (US 6,619,527).

The applied reference has a common assignee with the instant application.

Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention “by another,” or by an appropriate showing under 37 CFR 1.131.

In regard to claim 1 Moeller discloses the invention as claimed including a combustion tool 10, with motor 40, suspension mechanism 50, disposed within cylinder head 34, defining a cavity 52, with floor 56, the cavity substantially encloses the fan motor, with the lower end of the fan motor being spaced above the floor, restraining member 116, mounted to the cylinder head with bolts, elastic member 78, disposed within the tool, relative to the motor and directly between the cylinder head and the motor to absorb force along the axial direction (see Figs. 1-3,6 and C5,L8 – C7,L54).

In regard to claim 4, Moeller discloses the invention as claimed including

restraining member 116, disposed radially outward of the fan motor (see Figs. 2 and 3).

In regard to claims 5 and 6, Moeller discloses the invention as claimed including an integral piece elastomer elastic member 78 (see Fig. 6 and C6,L60-67).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moeller.

Moeller discloses the invention substantially as claimed including an arcuate shaped restraining member 116, secured to the cylinder head with bolts. What the invention of Moeller does not disclose is the use of a snap ring to secure the suspension ring to the cylinder head. However, the examiner takes Official Notice that it is old and well known in the art to provide a snap ring or a retaining ring to hold an object inside a recess for the purpose of preventing the accidental removal of the object. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the modified invention of Moeller with a snap or retaining ring instead of a ring shaped retaining cap for the purpose of preventing the accidental removal of the suspension mechanism.

Allowable Subject Matter

8. Claims 9,10,12-15,17,19 and 20 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

9. Claim 3 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Response to Arguments

10. Applicant's arguments, with respect to claims 9,17 and 19 have been fully considered and are persuasive. The rejection has been withdrawn.

The examiner agrees that there would be not motivation to incorporate the teaching of the Nikolich into Moeller as it pertains to the elastic member mounted directly to the motor. Furthermore, In regard to applicant amendment to claim 20, applicant has overcome the rejection the prior art of Moeller.

In regard to claim 1, applicant amendment to the claim does not overcome the rejection of Moeller. Applicant argues that Moeller does not teach of an elastic member disposed directly between the motor and cylinder head. The examiner does not agree. Given the broadest reasonable interpretation of this limitation, the term "directly" can encompass a member that is not directly connected to the motor. Furthermore, the limitation in and of itself does not imply that there need to be a clear path between the objects as applicant has argued, but instead could encompass the member wholly

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located between the cylinder head and the motor. When interpreted in this manner, the reference of Moeller is deemed to read on the claim and hence the rejection is proper.

In light of the 112, 2nd paragraph rejection, the action is non-final.

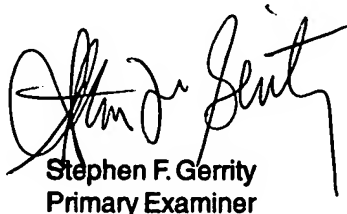
Conclusion

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul Durand whose telephone number is 571-272-4459. The examiner can normally be reached on 0730-1800, Monday - Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Paul Durand
December 29, 2005



Stephen F. Gerrity
Primary Examiner